IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7215 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHUDARGAR BHAGWANAGAR GOSAI

Appearance:

1. Special Civil Application No. 7215 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/01/2003

ORAL JUDGEMENT

With the consent of the parties, the matter is taken up for final disposal today. The present Special Civil Application is filed by Gujarat State Road

Transport Corporation (hereinafter referred to as "the Corporation") challenging the judgement and award passed in Reference (LCR) No.364 of 1994 dated 27.2.2002 whereby the learned Judge of the Labour Court, Rajkot was pleased to quash and set aside the order of termination of the respondent workman and reinstatement with continuity of service with 25% back wages was ordered. The learned Judge was pleased to impose the punishment of stoppage of three increments with future effect. The learned Judge was also pleased to award cost of Rs.250/-, to the respondent workman.

2. As the facts stand, the respondent workman was serving as Conductor and had put in about 20 years service with the petitioner corporation. It is the case of the petitioner corporation that on 23.2.1989 when the respondent workman was on duty on City Service Route No.24/38, he was found to have indulged in certain irregularities. He was served with a charge sheet, to which he submitted his reply dated 24.7.1989. In departmental inquiry the respondent workman was held guilty. Hence on 11.7.1991 he was served with Show Cause Notice proposing penalty of termination. The respondent replied to the same by letter dated 15.7.1991. After taking into consideration the same, the competent authority imposed punishment of stoppage of six increments with future effect. With that the chapter of departmental inquiry had come to a close. Thereafter, in an appeal filed by the respondent workman for reduction of punishment, the appellate authority instead of reducing the punishment issued a Show Cause Notice dated 21.10.1992 asking the respondent workman to explain as to why punishment should not be enhanced. Thereafter, on 12.5.1994 a dismissal order was passed.

3. The learned Judge after taking into consideration the rival contentions of both the parties was pleased to hold that the order of dismissal was illegal and that the respondent workman is entitled for reinstatement in service and that in normal circumstances the respondent workman would have been entitled to full back wages, but taking into consideration the evidence produced on record the learned Judge was pleased to award only 25% of back wages and imposed penalty of stoppage of three increments with future effect.

4. After hearing the learned advocates for both the sides, judgement and award is required to be quashed and set aside. The learned Judge after having held the respondent workman guilty, has awarded 25% back wages. Once an employee is guilty and for that he is punished,

back wages could not have been awarded, that too with a major penalty of stoppage of three increments with future effect.

5. On perusal of the judgement and award, no valid reasons are found which would have warranted an interference with the punishment imposed by the management, except one that in an appeal filed by the respondent workman, the authority issued notice for enhancement of punishment that too after lapse of one year. The learned Judge would have been justified in substituting the punishment imposed by the competent authority of 'stoppage of six increments with future effect'. Once the respondent workman is held guilty and he is punished, that too with a major punishment, there is no question of granting any back wages.

6. In view of that the judgement and award is hereby quashed and set aside. The order passed by the competent authority of imposing penalty of stoppage of six increments with future effect is restored, meaning thereby, the order of dismissal will not survive. Consequently, the respondent workman be reinstated in service with continuity of service within four weeks from the date of receipt of this order.

7. The petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No order as to costs.

(Ravi R. Tripathi, J.)

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